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IRS Warns Offshore Account Holders: Disclose Before It's Too Late

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The IRS has collected \$8 billion in taxes and penalties under its offshore account programs. And with the web of data the IRS has under FATCA, the IRS warns those who haven't yet participated they had better. The agency issued a public reminder to citizens and green card holders that they should strongly consider joining one of two IRS programs to get into compliance with the IRS.

Both the [Offshore Voluntary Disclosure Program \(OVDP\)](#) and the [streamlined procedures](#) enable taxpayers to correct prior omissions while mitigating the potential penalties of continued non-compliance. There are also [separate procedures](#) for those who have paid their income taxes but omitted certain other information returns. You can't stay under the radar forever. In fact, under FATCA, the [Foreign Account Tax Compliance Act](#), there is an extensive network of [intergovernmental agreements \(IGAs\)](#) between the U.S. and partner jurisdictions. They are already in operation, with [automatic third-party account reporting](#) already under way. The IRS

says it is increasingly unlikely that offshore accounts will go unnoticed.



In addition to FATCA reporting, the Department of Justice's [Swiss Bank Program](#) continues to reach non-prosecution agreements with Swiss financial institutions that facilitated past non-compliance. As part of these agreements, banks provide information on potential non-compliance by U.S. taxpayers. Potential civil penalties increase substantially if U.S. taxpayers associated with participating banks wait to apply to OVDP to resolve their tax obligations.

The OVDP offers taxpayers with undisclosed income from offshore accounts an opportunity to get current with their tax returns and information reporting obligations. The program encourages taxpayers to voluntarily disclose foreign accounts now rather than risk detection by the IRS at a later date and face more severe penalties and possible criminal prosecution. Since the OVDP began in 2009, there have been more than 54,000 disclosures. The

IRS has collected more than \$8 billion from this initiative.

The streamlined procedures, initiated in 2012, were developed to accommodate a wider group of U.S. taxpayers who have unreported foreign financial accounts but whose circumstances substantially differed from those taxpayers for whom the OVDP requirements were designed. More than 30,000 taxpayers have used streamlined procedures to come back into compliance with U.S. tax laws. Two-thirds of these have used the procedures since the IRS expanded the eligibility criteria in June 2014.

Separately, based on information obtained from investigations and under the terms of settlements with foreign financial institutions, the IRS has conducted thousands of offshore-related civil audits that have produced tens of millions of dollars. The IRS has also pursued criminal charges leading to billions of dollars in criminal fines and restitutions.

Even though the IRS has faced several years of budget reductions, the agency continues to pursue cases in all parts of the world. Some taxpayers can opt for the easier and less costly [Streamlined program](#). Outside certain listed banks, the normal penalty within the OVDP remains 27.5%. That is far better than prosecution or much bigger civil penalties.

Within the OVDP, people who pre-cleared before the various effective dates are [generally safe](#) from the higher 50% penalty. As additional banks are added to the list, though, only those who get in under the wire will stay safe. The 50% penalty now applies to all taxpayers with accounts at financial institutions or with facilitators which are named, are cooperating or are identified in a court filing such as a John Doe summons.

For those who are not compliant with reporting [worldwide income](#) on U.S. tax returns, FBARs and IRS [Forms 8938](#), it is safest to join the OVDP or (in appropriate cases) at least the Streamlined program. The IRS has been clear that “[quiet](#)” [foreign account disclosures are not enough](#). Setting aside the potential criminal liabilities, the civil penalties alone are potentially catastrophic outside one of the disclosure programs.

Willful civil violations can draw penalties equal to the greater of \$100,000 or 50% of the balance in the account *for each violation*. A Florida man was hit with civil penalties equal to 150% of his account [even though this exceeded his entire offshore account balance](#). In that sense, even a 50% penalty applied once can look attractive when you consider the possibility of prosecution or even just higher civil FBAR penalties. Recent [guidance](#) suggests that the IRS could be more lenient in the future, but the IRS’s definition of leniency can still make the OVDP a very good—and very certain—deal.

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